IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

Bail Appl..No. 8026 of 2007()

CC.450/2007 of J.M.F.C.-II,ATTINGAL

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PETITIONER/ACCUSED

SABU, S/O.DEVADASAN, AGED 32 YEARS,
KANJIRAMVILA VEEDU, NEDUMPARAMBU,
NANDAIVANAM, NAGAROOR VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI. K.SIJU

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
S.I OF POLICE, KILIMANNOOR POLICE STATION
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P. SRI. S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO. 8026 OF 2007

Dated this the 19th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sec.498A of the IPC. The proceedings have been initiated on the basis of a private complaint filed by the de facto complainant i.e., the wife of the petitioner. The proceedings are pending before the matrimonial court and it is the case of the petitioner that the strain in the matrimonial relationship is prompting the complainant to initiate false proceedings against the petitioner.

2. The petitioner has not been served with any notice, summons or processes from the court. The learned Magistrate has now issued a non-bailable warrant of arrest to procure the presence of the petitioner and has handed over the warrant of

arrest to the de facto complainant to ensure execution. The petitioner finds such processes chasing him. He apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has never been served with any notice in the proceedings. There is absolutely no justification in the issue of non-bailable warrant of arrest at the first instance. It is, in these circumstances, prayed that directions under Sec.438 and/or Sec. 482 of the Cr.P.C. may be issued in favour of the petitioner.

4. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the

learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

7. In the peculiar facts and circumstances of this case, there shall be a direction that the warrant of arrest issued by the learned Magistrate against the petitioner shall not be executed till 29/12/07. On or before that date, the petitioner shall surrender before the learned Magistrate and seek regular bail.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. to Judge